IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 23RD MARCH 2007 / 2ND CHAITHRA 1929

Crl.MC.No. 335 of 2006()

CRRP.7/2001 of SESSIONS COURT, THALASSERY
MC.43/1999 of JUDL. MAGISTRATE OF FIRST CLASS COURT, THALASSERY

.....

PETITIONER: REVISION PETITIONER/RESPONDENT

R.M.RAMACHANDRAN, AGED 48 YEARS,
S/O.KANNAN NAIR, RAYORATH HOUSE,
KAYALORE, CHAVASSERY.

BY ADV. SRI.A.PARVATHI MENON

RESPONDENTS: RESPONDENTS/PETITIONER

---

1. K.RATHNAVALLI, D/O.BALAKRISHNAN NAMBIAR,
AGED 41 YEARS, `RATHNALAYAM',
THIRUVANGAD, P.O.TEMPLEGATE.

2. R.M.RAHUL, S/O.RAMACHANDRAN,
AGED 14 YEARS, `RATHNALAYAM', THIRUVANGAD,
P.O.TEMPLEGATE, MINOR REPRESENTED BY MOTHER,
THE FIRST RESPONDENT IN COURTS BELOW BUTNOW
RESIDING WITH THE PETITIONER/FATHER AT RAYORATH
HOUSE, KAYALORE, CHAVASSERY.

3. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 23/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.335 of 2006

Dated this the 23rd day of March, 2007

ORDER

The petitioner, aggrieved by the concurrent direction issued to him under Section 125 Cr.P.C to pay maintenance @ Rs.350/- per mensem to his wife and Rs.250/- per mensem to his son, has come to this Court with a prayer to invoke the powers under Section 482 Cr.P.C.

2. Marriage is admitted. Paternity of the child is also admitted. It is also contended that the marriage has now been dissolved by an order of court. It is further submitted that as per an interim order passed by this Court in M.F.A No.239 of 2001, the child is now in the custody of the petitioner.

3. The claimants - mother and child went before the learned Magistrate with a petition under Section 125 Cr.P.C claiming maintenance. Only two contentions of relevance were raised. It was contended that the claimant/wife is residing separately without sufficient reason. Secondly it was contended that the quantum of maintenance claimed is excessive.

4. The 1st claimant wife contended that she is entitled to separate maintenance because of the cruelty inflicted on her by her husband. The husband/petitioner herein contended that the wife is suffering from mental derangement and epilepsy.

5. The parties went to trial on these contentions. On the side of the claimants, the 1st claimant/wife examined herself as PW1. The petitioner herein did not adduce any oral evidence. On his side, Exts.D1 to D5 were marked. These documents were produced before the learned Magistrate specifically for the purpose of showing that there was incongruity in the versions of PW1.

6. The learned Magistrate on an anxious appreciation of the relevant inputs came to the conclusion that the claimant/wife has sufficient reasons to justify her claim for separate maintenance. The claim of the child was of course allowed. An amount of Rs.350/- and Rs.250/- per mensem respectively were ordered to be paid to the claimants.

7. Court of revision considered the challenge raised before it and chose to uphold the conclusions of the learned Magistrate.

8. The petitioner has now come before this Court with a prayer to invoke the powers under Section 482 Cr.P.C to interfere with the impugned concurrent direction. What are the grounds ? The learned counsel for the petitioner submits that the petitioner was willing to maintain the claimant/wife on condition that she lives with him. Alternatively it is contended that the quantum of maintenance awarded for the child and the wife is excessive. Thirdly and lastly it is contended that the child is now in the custody of the father.

9. I must alertly remind myself of the nature, quality and contours of the jurisdiction of this Court under Section 482 Cr.P.C. This jurisdiction is an extraordinary inherent jurisdiction. It is by now trite that the width, amplitude and the sweep of the powers must instill in the mind of the Court the need to be circumspect and cautious before such powers are invoked. Has justice failed ? Has there been failure or miscarriage of jurisdiction ? Has there been abuse of the process of the Court ? These are the crucial questions to be considered by the Court in a petition under Section 482 Cr.P.C.

10. Marriage is admitted. Separate residence is conceded. Wife has advanced reasons as to why she is residing separately. The couple were in their thirties when separation took place. There is no satisfactory explanation for the petitioner as to why the wife is residing separately. Except the plea that the mother and brother of the wife are influencing her to reside separately, no better reason is urged. The wife tendered evidence as PW1. The husband did not choose to tender any evidence. Exts.D1 to D5 were pressed into service to pick holes in the case of the wife. To me, it appears that no reasonable person could have come to any conclusions other than the concurrent conclusion of the courts below on the basis of the materials available about the claimant/wife, to claim separate maintenance, there is no explanation as to why the petitioner did not

choose to mount the witness stand and make an offer to maintain the wife on condition that she lives with him. Obviously and evidently, he did not want to face a cross examination on that aspect. The very plea raised by him shows that he has no serious intention to get back his wife to reside with him. The allegation was of mental derangement and epilepsy against the wife. According to him, these prompted her to take up separate residence. The conclusion appears to be safe that the petitioner has no serious intention of getting his wife to live with him. The plea raised was thus evidently and transparently not bonafide. Moreover, admittedly there has been a divorce and after the divorce, he cannot make such an offer nor is the wife obliged to reside with him. The plea that the petitioner is willing to maintain his wife on condition that she lives with him does not cover the dispute for a substantial portion.

11. So far as the child is concerned, maintenance has been ordered. It is contended that as per an interim order, the child is now under the custody of the petitioner. It will be open to the petitioner to move the learned Magistrate for cancellation of the order or to resist the claim for execution of the order for such period that the child is with the petitioner. For such period that the child was with the mother, certainly the petitioner will be liable to pay maintenance to the child.

12. One last question raised is about the quantum of maintenance. The petitioner was admittedly an employee in a press. The quantum of maintenance awarded - Rs.350/- Rs.250/- per mensem, is, according to me, consistent with the materials available about the means of the petitioner and the needs of the claimants. In any view of the matter, I am not persuaded to agree that the quantum fixed deserves or warrants interference by invoking the jurisdiction under Section 482 Cr.P.C.

13. This Crl.M.C is, in these circumstances, dismissed, but with the above observations.

(R.BASANT, JUDGE)

rtr/-